

given the fungibility of money, that particular spending utilized particular incoming contributions.

The foregoing aside, the legal flaws in NMRP's substantive allegations are apparent, so even if CWA were liable for some or all of IS PAC's conduct at issue, there is no reason to believe that CWA violated the Act.

Regarding the allegations concerning IS PAC's Schedule E submissions, while it appears that IS PAC was not required to make them, they appear to have been prompted by a subjective determination that the reported public communications would benefit President Obama's reelection even though they mention no federal candidate. An exchange of correspondence between IS PAC and IS PAC's FEC Campaign Finance Analyst that is available on the Commission's website indicates that IS PAC mistakenly understood the legal criteria for an independent expenditure under the Act. We doubt that such good-faith over-reporting merits any Commission action other than the technical assistance that the Analyst is apparently providing. As for NMRP's self-contradictory allegations that some of IS PAC's Schedule E reports were filed late or contained inadequate information, if no report was due at all then a report that was gratuitously filed cannot be either untimely or deficient in content.

The complaint also alleges that "CWA and [IS PAC] have conspired to evade New Mexico [contribution] limits through the creation of a sham federal PAC and defrauding the Commission," and that this is a "crime" (the statutory basis of which NMRP does not identify). Of course, the Commission has no jurisdiction to enforce New Mexico law. Regardless, the NMRP is simply wrong: as a constitutional matter, there could be no enforceable amount limitation (or source restriction relevant to CWA) on a contribution to a New Mexico-registered political committee that, like IS PAC, does not itself contribute to New Mexico candidates, party committees or other New Mexico-registered contributing state political committees. We know this not only because of *Speechnow.org v. Federal Election Commission*, 599 F. 3d 686 (D.C. Cir.) (*en banc*), cert. denied, 131 S. Ct. 553 (2010), and its progeny generally, but most directly because NMRP itself has succeeded as a plaintiff in federal-court litigation in securing an injunction against the very "New Mexico [contribution] limits" it has raised here, namely, those that would otherwise apply to contributions to New Mexico political committees that engage only in independent expenditures. See *Republican Party of New Mexico v. King*, 2012 U.S. Dist. LEXIS 7225, ** 20-22 (Jan. 5, 2012).² For NMRP to file a complaint with the Commission that alleges "fraud" and "circumvent[ing] New Mexico law" that the complainant itself has effectively overturned in another proceeding, and to do so without disclosing that fact to the Commission, constitutes, let us say, something of a "fraud" on the Commission itself, albeit one whose sole remedy may lie in the Commission's dismissal of its complaint.

Finally, insofar as the complaint may be read to suggest that IS PAC is not really a federal political committee, the NMRP does not purport to provide information about all of IS PAC's activities since its inception in June 2011, and it may be premature to make a political committee determination, which requires a "case-by-case" review of myriad factors to ascertain a group's "major purpose" (assuming, as is not clear here, that IS PAC has reached the statutory

² We also note that IS PAC may not qualify as a New Mexico political committee in the first place. See generally *New Mexico Youth Organization v. Herrera*, 611 F. 3d 649 (10th Cir. 2010).

15044330492

\$1,000 "expenditure" (or "contribution") threshold). *See generally The Real Truth About Abortion, Inc. v. Federal Election Commission*, No. 11-1760, slip op. at 20-26 (4th Cir. June 12, 2012); FEC, "Political Committee Status," 72 Fed. Reg. 5595 (Feb. 7, 2007): And, even if IS PAC does *not* (or does not yet) qualify as a federal political committee, its registration with the Commission and its reporting as such would be another instance of *over-reporting* as to which technical assistance appears to be the appropriate Commission response.

In short, then, even if CWA were liable for some or all of IS PAC's conduct at issue, there is no reason to believe that CWA violated the Act.

Accordingly, for the reasons set forth above, respondent CWA respectfully requests that the Commission find that there is no reason to believe that CWA violated the Act, and that the Commission dismiss the complaint against CWA.

Yours truly,



Laurence E. Gold
Counsel for Communications Workers of America

cc: Annie Hill, CWA Secretary-Treasurer
Jana Smith-Carr, CWA Staff Representative